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Supreme Court, U.S.
FILED
JAN 17 2001
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No. 00-952

In The
Supreme Court of the United States

WISCONSIN DEPARTMENT OF HEALTH
AND FAMILY SERVICES,

Petitioner,

v.

IRENE BLUMER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE WISCONSIN COURT OF APPEALS, DISTRICT IV

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Supreme Court Rule 15, the respondent, by her attorney, Mitchell M. Hagopian, asks leave to file the attached Respondent's Brief and Appendix for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Respondent has previously been granted leave to proceed *in forma pauperis* in the Wisconsin Court of Appeals, District IV.

The affidavit of respondent's guardian in support of this motion is attached hereto.

Mitchell Hagopian
Attorney for Respondent
Counsel of Record

JAN 11 2001

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IRENE BLUMER,

Respondent.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED *IN FORMA PAUPERIS*

STATE OF WISCONSIN)
)
COUNTY OF GREEN)

I, Burnett Blumer on oath being first duly sworn, depose and say that:

I am the husband of and guardian for Irene Blumer, the respondent, in the above-entitled case (copy of letters of Guardianship attached and incorporated by reference); that in support of Respondent's motion to respond to the petitioner's request for a writ of certiorari from this Court without being required to prepay fees, costs or give security therefor or to pay for the costs of having briefs prepared and printed; I state that because of poverty she is unable to pay the costs of said proceeding or to give security therefor; or to pay for the costs of having briefs prepared and printed.

I further swear that the responses which I have made to the questions and instructions below relating to her ability to pay the cost of prosecuting the appeal are true.

1. Is the respondent presently employed?

   No. The respondent is 77 years old and has been residing in a nursing home for the past six years. She was last employed in 1989 by Moore Business Forms in Monroe, Wisconsin. She retired from that job in 1989. I do not know what her last monthly salary was.

2. Has the respondent received within the past twelve months any income from a business, profession or other form of self-employment or in the form of rent payments, interest, dividends, or other source?

   Yes. The respondent receives Social Security benefits and a pension from her last employer. Her Social Security benefits for the preceding twelve months totaled approximately $12,294. Her pension benefits for the past twelve months has totaled approximately $4,028.64. Because she is a recipient of Medicaid benefits (and has been since 1997) all but $45 of her monthly income is paid to the nursing home in which she resides or to me, Burnett Blumer, her dependent community spouse.

3. Does the respondent own any cash or checking or savings account?

   No.

4. Does the respondent own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

   Yes. In accordance with the Medicaid eligibility rules the respondent set aside $6,195 in 1997 to cover burial costs. This money is located in certificates of deposit (current value

$8,667). The respondent also has a certificate of deposit which can be accessed for personal needs in excess of her $45 monthly personal needs allowance (principally clothing and non-Medicaid covered medical costs). Interest generated from this certificate of deposit is paid to the nursing home. The current value of the certificate of deposit is $2,000. The funds set aside for burial and the certificate of deposit are considered exempt resources by Medicaid.

5. List the persons who are dependent upon the respondent for support and state the respondent's relationship to those persons.

Burnett Blumer. He is the respondent's husband.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Burnett Blumer
Burnett Blumer
Guardian for Irene Blumer, Respondent

Subscribed and sworn to before me
this 9th day of January, 2001.

Sharon L. Pape
Notary Public, State of Wisconsin
My Commission expires 6-09-02.

FEB 02 1999

STATE OF WISCONSIN CIRCUIT COURT GREEN COUNTY

In the Matter of the Guardianship and Protective Placement of:

IRENE G. BLUMER
Incompetent.
DOB: August 29, 1923

LETTERS OF GUARDIANSHIP

File No. 94-GN-44

FILED
CIRCUIT COURT
GREEN COUNTY WIS
DEC 15 1994
DAVID G. DEININGER
JUDGE

THE STATE OF WISCONSIN TO: Burnett A. Blumer

WHEREAS, you have been appointed guardian of the person and estate of Irene G. Blumer, incompetent, and you have fully qualified;

NOW, THEREFORE, these Letters are issued to you, and you are ordered to faithfully discharge your trust in relation thereto according to law, until you are discharged therefrom by order of this court.

IN TESTIMONY WHEREOF I have signed these presents and affixed the seal of this Court this 15th day of December, 1994.

David G. Deininger
Green County Circuit Judge

CIRCUIT COURT
GREEN COUNTY, WIS.

No. 00-952

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RESPONDENT'S BRIEF AND APPENDIX IN OPPOSITION

MITCHELL HAGOPIAN
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RESPONDENT'S BRIEF AND APPENDIX IN OPPOSITION

I. THE DECISION OF THE WISCONSIN COURT OF APPEALS DOES NOT PRESENT A SIGNIFICANT FEDERAL QUESTION; HAS NO IMPACT OUTSIDE WISCONSIN AND HAS VERY LIMITED FISCAL OR ADMINISTRATIVE IMPACT IN WISCONSIN.

There is no question that the decision of the Wisconsin court of appeals is not in accord with the holdings of several other jurisdictions. The relevant questions for this Court, however, are whether the decision creates a significant federal question and whether the decision will require any other jurisdiction—state or federal—to change existing practices. The answer to all of those questions is no.

The petitioner asserts that the decision presents a significant federal question because it "will require significant changes in the way Wisconsin and many other states have routinely administered the spousal impoverishment sections of the MCCA." (Petition at 18)[1]. The petition fails, however, to identify any specific administrative practice of Wisconsin or any other state that will be required to be changed. The reason for that is simple. There is none.

First, as to any state other than Wisconsin the decision will not require any changes because it is not binding precedent on any other state. The petitioner's statement that it "will require" anything in any other state is a misrepresentation of the effect of this decision.

Second, even in Wisconsin the decision will have virtually no effect on any practice of the agency. Long before this decision the state's hearing examiners routinely conducted hearings to increase the community spouse resource allowance based on a shortfall in the community spouse's income. In many cases, even when the institutionalized spouse's income was made available, additional assets were needed to generate income to raise the community spouse's income to the minimum monthly maintenance needs allowance. The practical effect of the decision is simply that the hearing examiner will now include one less number in the calculation of what constitutes the "community spouse's income." This change in administrative practice is barely detectable—it certainly is not, as the petitioner contends, "significant."

Third, the decision will have no federal effect. Neither the Seventh Circuit Court of Appeals nor either of Wisconsin's federal district courts has ruled on this issue. Therefore, no conflict with federal courts relevant to Wisconsin exists.

[1]Hereafter references to the petition will appear as "Pet. at__" and references to the petition's appendix will appear as "Pet. app. at__."

II. EVEN USING PETITIONER'S GROSSLY EXAGGERATED ESTIMATES, THE FISCAL IMPACT OF THE DECISION ON WISCONSIN AND FEDERAL MEDICAID EXPENDITURES WILL BE MINIMAL.

The petitioner also asserts that the court of appeals decision will have a substantial fiscal impact on Wisconsin's Medicaid budget. (Pet. at 18-20). Specifically, it asserts that every 100 new "resource first" cases will cost $10 million in additional Medicaid expenditures. It bases this assertion on a projected cost of $2000 per month for each case with an estimated length of Medicaid eligibility of fifty months per case ($2000 x 100 x 50 = $10,000,000). There are many problems with this estimate. First, petitioner fails to support any of these projections with cites to any data. Apparently this Court is expected to take petitioner's self-serving "estimates" at face value. In fact, data from the petitioner itself undercuts these numbers. According to the petitioner's Division of Health Care Financing in 1999 (the latest year for which data is available) only 26% of nursing home residents at a Medicaid reimbursable level of care had been there for four or more years.[2] Thus the petitioner's "estimated average" of fifty months of Medicaid eligibility for "resource first" cases is not at all based on the reality of the actual length of most nursing home stays. The petitioner's choice of 50 months would instead appear to be for the purpose of inflating the cost of the court of appeals decision to the nice round figure of $10 million.

Second, even if, *arguendo*, the exaggerated figure of $10 million is accepted, the fiscal impact on Medicaid is minimal. Initially, that figure represents the estimated cost over more than four years. On an annual basis the cost would be $2.4 million. To put that number in

[2]*Wisconsin Nursing Homes and Facilities for the Developmentally Disabled 1999*, Wisconsin Department of Health and Family services, November 2000, Table 22, p. 38 (relevant excerpts attached as Appendix 1a-2a).

perspective, the total Medicaid expenditures by Wisconsin in the current fiscal year (July 1, 2000-June 30, 2001) will be over $2.9 billion.[3] The $2.4 million the petitioner is concerned about represents .00082—less than one thousandth—of the Wisconsin Medicaid budget. This impact can only be described as microscopic.

Third, the decision will have no unforeseen effect on federal Medicaid expenditures. The resource-first methodology—unlike the income-first methodology—is clearly allowed by the Medicaid law. Therefore it is entirely possible that all fifty states could adopt it. That possibility is already a budgetary fact of life in the federal Department of Health and Social Services' fiscal calculations. Any expenditures that might be related to the resource-first methodology would be included in the agency's appropriation request, just as expenditures are for any other additions to a state Medicaid program that are sanctioned by the federal Medicaid law.

III. PETITIONER'S CLAIM THAT THE DECISION WILL RESULT IN NUMEROUS HUGE CSRA'S IS WRONG

Petitioner also claims that this decision will regularly lead to community spouse resource allowances (CSRA) of "$340,000 or more." (Pet. at 20, FN 14). Petitioner arrives at this figure by assuming that each community spouse will require an average of $992 per month in additional income to raise her income to the minimum monthly maintenance needs allowance (MMMNA) (pet. at 19-20).[4] Petitioner then claims that it will take an average of $340,000 in

[3]See generally, Wis. Stats. § 20.005 (1999-2000) specifically, the section from Figure 20.005(3) which contains the line item appropriations for the Health Care Financing division of the Health and Family Services Department; 20.435(4)(b), (bm), (im), (o) and (pm). Total Medicaid appropriation =$2,929,530,500. (Relevant excerpts attached as app. 3a-6a).

[4]Once again, petitioner cites no data to support this estimate.

assets to generate $992 on a monthly basis. This figure is arrived at by assuming a return on principal of 3.5%. (Pet. at 20, FN 14). Obviously, petitioner is using an unrealistically low interest rate for the purpose of inflating the amount of assets necessary to generate the needed income. Using the realistic, yet still conservative interest rate of 6%--a rate which financial institutions are actually paying on certificates of deposit in Madison, Wisconsin[5]--the amount suddenly drops by over $140,000 to $198,800.

Apart from petitioner's flawed mathematical assumptions, there are at least two practical impediments which will ensure that large increases, whether they be to $340,000 or $198,800, will not occur in a significant number of cases.

First, acquiring an expanded CSRA is by no means a simple process. Only a hearing examiner can expand the CSRA. In order to get before an examiner a person must first apply for Medicaid with the certain knowledge that the application will be denied by the county.[6] That person must then request a hearing within the 45 day time period for appealing negative decisions. Finally, the person must make a significant offer of proof, including detailed and sensitive information about the person's financial situation, in order to convince the examiner of the appropriateness of the requested increase. Of course, all this assumes that a couple has somehow become aware of this entire process before they have spent down all their assets on nursing home care. Given that county agencies are under no obligation to inform the public or even applicants about this process, (and in this office's experience regularly deny its existence)

[5]See attached rate sheet from State Capitol Credit Union for the period January 10, 2001 thru January 23, 2001 at Appendix 7a).

[6]Denial is certain because anyone who needs a higher CSRA is, by definition, already over the basic asset eligibility threshold for Medicaid.

public awareness of the process is almost nonexistent. These bureaucratic barriers will certainly cause significant numbers of people who might be eligible for an expanded CSRA not to seek it.

Second, and more important, an expanded CSRA is always limited by the amount of resources the couple actually has. To use the petitioner's figures, while a community spouse that is $992 short of the MMMNA may theoretically be entitled to have her CSRA expanded to $340,000, in reality the CSRA can only be expanded by the amount of resources actually owned by the couple at the time application is made. Thus, if this hypothetical couple had only $10,000 in excess resources the CSRA could only be expanded by $10,000—not to $340,000.

The Blumers' situation illustrates both of these points. As a result of the court of appeals decision, the Blumers will be entitled to have their CSRA expanded by $14,513—the amount by which their assets exceeded Irene Blumer's (the institutionalized spouse's) asset limit of $2,000 and the formula CSRA of $72,822 at the time Irene applied for Medicaid. Yet that expanded CSRA is still insufficient to bring Burnett's (the community spouse's) income up to the MMMNA. As the petitioner correctly noted, Mr. Blumer's income would still be $25 short of the MMMNA. (Pet. at 12-13). Using petitioner's interest rate of 3.5% it would take an additional $8,571 to cover the remaining shortfall. It could not be expanded by that additional amount, however, because at the time of application the Blumers did not have the additional $8,571 needed to cover it. Of course at one time they did have the additional $8,571. When Irene Blumer entered the nursing home the couple had over $145,000 in assets. (Pet. at 12). By the time they became aware of the possibility of expanding the CSRA they had already spent $8,571 more than they would have had to.

In summary, the petitioner's assertions that the court of appeals decision will have a significant fiscal effect on the Medicaid program and result in huge CSRAs are highly exaggerated.

IV. THE WISCONSIN COURT OF APPEALS CORRECTLY CONCLUDED THAT 42 USC §1396r-5(e)(2)(C) WAS NOT AMBIGUOUS.

A. The Statutory Language In (e)(2)(C) Is Plain

Despite the petitioner's claim to the contrary, the court of appeals properly followed established case law in determining that 42 USC §1396r-5(e)(2)(C) was unambiguous. As the court noted, statutory interpretation begins with the plain meaning of the language at issue. It is unnecessary to look past the statutory language if it is clear and unambiguous. (Pet. app. at 10a, ¶17). Contrary to the petitioner's claim, the court of appeals did not turn the ordinary process of statutory interpretation "on its head." (Pet. at 22). It examined the relevant provision in the context of the spousal impoverishment provisions and explained at length why and how its interpretation of (e)(2)(C) fit in comfortably with the rest of 1396r-5. (Pet. app. at 11a-14a, ¶¶20-23).

The court of appeals' analysis is entirely consistent with the method utilized by this Court in King v. St. Vincent's Hospital, 502 U.S. 215 (1991).[7] King involved the interpretation of a statute that guaranteed reemployment rights to members of the armed services that temporarily left their jobs to serve tours of duty. The statute did not condition the reemployment right on length of duty tour. The 11th Circuit Court of Appeals, however, did. It found that any request for a leave of absence made pursuant to the statute had to be "reasonable;" and that the three-year request made in

[7]The petitioner relies on King as support for its assertion that the court of appeals failed to look at (e)(2)(C) in its statutory context. (Pet. at 22).

the case was per se unreasonable. This Court reversed, finding that the statute's silence was an unambiguous expression of congressional intent not to limit the right of reemployment. As the Court put it, there was no "equivocation in the statute's silence, so as to render it susceptible to interpretive choice." Id at 220. Having found no ambiguity in the statutory language, the Court then examined the provision in the context of surrounding provisions of the statute and found that its interpretation was consistent with them. This is precisely the method followed by the Wisconsin court of appeals.

Petitioner, relying on the decisions of other jurisdictions, contends that the phrase "community spouse's income" in (e)(2)(C) becomes ambiguous when read in conjunction with other provisions of 1396r-5. (Pet. at 22). For example, in Cleary v. Waldman, 959 F.Supp. 222 (D.N.J. 1997), the earliest of the "income-first" cases, the court found that the plain language of 42 U.S.C. §1396r-5(e)(2)(C) could not be understood absent an analysis of all the spousal impoverishment provisions contained in the Medicare Catastrophic Coverage Act (MCCA).[8] After engaging in a detailed recitation of these provisions the court concluded:

> In light of the detailed provisions of subsection (d) designed to make available to the community spouse as much, but only as much, of the institutionalized spouse's income as necessary to insure her monthly need, it would be anomalous to construe subsection (e)(2)(C) in such a manner as to exclude the institutionalized spouse's income from the calculation and substitute for it resources which would provide the needed income to insure the community spouse received her monthly needs allowance. Cleary at 232.

[8]The 3rd Circuit Court of Appeals has upheld the district court's analysis of this issue. See Cleary v. Waldman, 167 F.3rd 801, 807 (3rd Cir. 1999).

The problem with this analysis is that the "detailed provisions of subsection (d)" expressly relate to the allocation of the institutionalized spouse's income for purposes of determining how much of the institutionalized spouse's income will be used to offset the Medicaid payment to the institution after the institutionalized spouse becomes Medicaid eligible. By contrast subparagraph (e)(2)(C) deals exclusively with asset eligibility determinations.

What the court's analysis in Cleary failed to address is that these provisions deal with separate, equally important, but essentially unrelated issues. Subparagraph (e)(2)(C) deals with asset eligibility. Subsection (d) deals with how the institutionalized spouse's income will be spent after she actually becomes Medicaid eligible. Subsection (d) is irrelevant so long as an institutionalized spouse remains ineligible for Medicaid due to excess assets. To put it simply, the institutionalized spouse cannot begin to use her income to help the community spouse augment his income because she is using her income to pay privately for the services Medicaid is not covering due to asset ineligibility. The court's conclusion fails to explain how its analysis of the MCCA in its entirety necessarily leads to a result that differs from a plain English reading of (e)(2)(C). Nor have any of the other decisions adopting the "income first" approach.

B. The Federal Agency's Views On 42 USC §1396r-5(e)(2)(C) Are Entitled To No Deference Because They Have Been Inconsistent And Are Not Contained In Any Of The Normal Sources Of Agency Interpretation.

Petitioner also contends that review is warranted because the court of appeals decision failed to give deference to policy statements by the Department of Health and Human Services (DHSS) and its Health Care Financing Administration (HCFA). (Pet. at 23). Petitioner cites to three HCFA letters and one letter from DHSS Secretary Shalala to Ohio Governor George Voinovich as support for that contention. (See Pet. app. at 78a-90a). The court of appeals did not address the relevance of

these letters in detail in its decision because it found the statute unambiguous, but did note that they were inconsistent with one another. (Pet. app. at 16a, ¶27).

Indeed, these letters are inconsistent. The first letter, dated December 1993, states that the income-first rule is the only method of applying 42 U.S.C. §1396r-5(e)(2)(C). (Pet. app. at 83a). Three months later, in March of 1994[9], HCFA repudiated its December letter and found that the income-first method was permissible and that its instructions should only be considered guidelines; final regulations would be necessary to clarify the issue. (Pet. app. at 84a-89a). Finally, Secretary Shalala's most recent pronouncement on the subject indicates that her department may now be leaning away from the income-first rule: "...the Department has no plans to mandate the income first rule." (Pet. app. at 90a).

The only usable information that can be gleaned from these letters is that we must wait until regulations are issued before the opinion of the Department of Health and Human Services warrants the consideration of any deference. It is true that the DHSS has been granted "exceptionally broad authority to prescribe standards for applying certain sections of the [Social Security] Act." Schweiker v. Gray Panthers, 453 U.S. 34, 43, 101 S. Ct. 2633, 2640, 69 L. Ed. 2d 460 (1981). That authority, however, is not unlimited. First, an agency's interpretation expressed in informal opinions is entitled to less deference than an interpretation promulgated

[9]The July 1994 letter is essentially a verbatim copy of the March 1994 letter. The March letter was issued by the Washington office of HCFA. The July letter is the HCFA Chicago Regional office version of the same letter.

through formal rulemaking. See Christiansen v. Harris County, ____ U.S. ___, 120 S. Ct. 1655, 1662-63 (2000). Second, whatever deference is accorded is further reduced when the agency's interpretations are inconsistent. See I.N.S. v. Cardoza Fonseca, 480 U.S. 421, 446-fn 30 (1987). When, as here, DHSS' policy interpretations are expressed only in conflicting, informal letters despite a 12 year opportunity to engage in notice and comment rulemaking, they warrant no deference.

C. The MCCA Conference Committee Ultimately Adopted The Resource-First Methodology, Albeit In A Different Form Than Contained In The Senate Bill.

The petitioner asserts that specific incorporation of the "resource-first" methodology was rejected in the final version of the Medicare Catastrophic Coverage Act (MCCA). Petitioner is wrong.

Not surprisingly, the final version of the MCCA was the product of a conference committee composed of members of both houses of Congress. The petitioner, as well as courts which have adopted the income-first rule, have focused upon the conference committee's decision not to adopt a Senate provision which would have defined as "excluded resources" resources that were necessary to produce income that is available to the community spouse up to the MMMNA. See H.R. Conf. Rep. No. 100-661, 100th Cong., 2nd Sess., 145, 263, reprinted in 1988 U.S. Code Congressional and Administrative News 923, 1041. (Pet. at 21). While it is true that the Senate provision would have accomplished a result that would have been similar to the resource-first determination, a close examination of how the final statutory language in (e)(2)(C) differed from the Senate version indicates that the conference did not reject the resource-first rule.

In the Senate version of the bill, in addition to the above language on excluded resources, there was a provision for additional increases in the CSRA if the community spouse could prove

financial duress. Ibid at 1041-1042. The bill ultimately adopted by the conference committee did three things. First, it removed the Senate provision which would have identified resources necessary to raise the community spouse's income to the MMMNA as resources excluded in the eligibility determination process. Second, it continued to mandate an expansion of the community spouse resource allowance in the event that the formula CSRA was insufficient to generate income up to the MMMNA. It did this by moving the authority to expand the CSRA to the section involving "notice and fair hearing." Third, it eliminated the possibility of increasing the CSRA to an amount higher than that necessary to achieve the MMMNA. Ibid at 1044-1045.

The principal difference between the Senate version and the conference version has to do with who would make the eligibility determination when eligibility would have to be based on a non-formula CSRA. In the original Senate version that determination would have been made by a county worker. This is because the additional resources necessary to generate the MMMNA were identified as "excluded" resources. County workers make decisions about which resources fall into the category of excluded resources.[10] Thus, under the original Senate version, a county worker would have had to engage in the mathematical calculations necessary to determine if the formula

[10]In Wisconsin, county workers are charged with making initial decisions relating to resource exclusions. They are provided with detailed instructions on which particular resources are excluded. See petitioner's *Medical Assistance Handbook*, appendix 11, attached as appendix 8a-30a. As a general rule, particular resources are excluded from MA eligibility determinations for fairly obvious policy reasons. Moreover, excluded resources are either excluded in their entirety or up to a specific dollar value. By contrast, the "exclusion" contemplated by the original Senate provision would have been totally different from any of the traditional resource exclusions. Whether a particular resource would have been excluded would have been determined by its income producing potential and the need of the individual community spouse. The exclusion could not have been applied uniformly in all cases. Had the original Senate provision been adopted county workers would have been responsible for a complicated, difficult task that was unlike any of their other ministerial duties. In short, it would have created an administrative headache at best and a nightmare at worst.

CSRA was insufficient to generate income up to the MMMNA. By removing the potentially expanded community spouse resource allowance from the group of resources which would be "excluded" under an initial determination of Medicaid eligibility the committee relieved county workers of this onerous task. By requiring that the determination be done through the fair hearing process the conference committee mandated that independent, third party review of the eligibility determination (in the form of a hearing officer or ALJ) in that single circumstance would occur in all cases. The conference version assures that county workers will not be engaging in complicated mathematical calculations which would be subject to numerous and potentially significant errors. It also assures that a person who believes he or she is entitled to a higher CSRA than that generated by the formula CSRA will have to affirmatively request such a determination and will be required to demonstrate the need for it in a formal adjudicative forum.

The other difference between the Senate version and the conference version was to limit the CSRA expansion to an amount necessary to meet the MMMNA.

These changes were significant concessions on the part of the Senate. Nothing in the legislative history indicates that the Senate was also agreeing to a provision which effectively gutted its desire to have resources be the primary funding source of the MMMNA. The courts which have adopted that position have read far more into the legislative history of the MCCA than is supported by the actual record of that enactment.

D. The Fact That "Income First" Is Not Specifically Prohibited By The Statute Does Not Mean That It Is Permitted

Finally, after discussing 42 USC §1396r-5(e)(2)(C) the petitioner states: "Nowhere does subsection (e)(2)(C) preclude or forbid the 'income first' approach of attributing the institutional spouse's income to the community spouse in order to raise the latter's monthly income." (Pet. at

21). This statement is one of the keystones of the whole "income-first" legal structure. Most courts which have adopted the income–first rule have seized on the fact that it is "not prohibited" as authority for their decisions that it is a permissible interpretation. See, e.g. Chambers v. Ohio Dept. of Human Services, 145 F. 3d 793, 802 (6th Cir. 1988), and Thomas v. Com'r, Div. of Med. Assistance, 682 N.E.2d 874, 879 (1997). In fact, there is a logical explanation for the absence of the prohibition. The congress, in enacting the straightforward language of 42 USC §1396r-5(e)(2)(C) presumably did not believe it was necessary to prohibit the imputation of the applicant spouse's income because there was no precedent for the deeming of income from the institutionalized spouse to the community spouse in the Medicaid statute.

One of the main accomplishments of the spousal impoverishment revisions was to end the deeming of community spouse income in the limited context of an application for institutional Medicaid by a married person. (See 42 USC §1396r-5(b)(1).) The specific prohibition on community spouse income deeming was necessary because of the general Medicaid rule, found at 42 USC §1396a(17)(D) that income of a nonapplicant spouse may be considered available to the applicant spouse in an eligibility determination. Because there is no conflicting Medicaid rule with respect to deeming of income away from the applicant spouse it was unnecessary to specifically prohibit it.

It is highly unlikely that the congress considered the possibility that state agencies would invent a theory that permitted them to deem income away from an institutionalized applicant (thereby making that applicant poorer) for the purpose of denying that applicant welfare benefits. With all due respect to the congress, there are only a limited number of schemes by which states

would subvert congressional intent that the congress can be expected to foresee and specifically foreclose.

CONCLUSION

The petition for a writ of certiorari should be denied. The decision of the Wisconsin court of appeals will have no effect outside Wisconsin and will have little practical effect, either administratively or fiscally in Wisconsin. Furthermore, the court did not err in its application of longstanding rules of statutory interpretation and correctly concluded that §42 USC 1396r-5(e)(2)(C) was not ambiguous. The petition has stated no reasons which would warrant granting of the writ.

Dated this 17th day of January 2001.

Mitchell Hagopian
Attorney for Respondent
Counsel of Record

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Elder Law Center
2850 Dairy Drive
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APPENDIX

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Wis. Stats. §20.005 (1999-2000) specifically, the section from Figure 20.005(3) which contains the line item appropriations for the Health Care Financing division of the Health and Family Services Department; 20.435(4)(b), (bm), (im), (o) and (pm) 3a

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Wisconsin
Nursing Homes
and
Facilities for the Developmentally Disabled

1999

November 2000

Bureau of Health Information
Division of Health Care Financing
Department of Health and Family Services

Table 22. Length of Stay of Nursing Home Residents by Licensure Category, Wisconsin, December 31, 1999

	Licensure Category					
	SNFs/ICFs		IMDs		Total	
Length of Stay	Number	Percent	Number	Percent	Number	Percent
Less than 100 days	6,010	15%	29	10%	6,039	15%
100 days to 180 days	2,783	7	23	8	2,806	7
181 days to 364 days	5,031	13	29	10	5,060	13
1-2 years	6,875	17	77	27	6,952	18
2-3 years	4,980	13	21	7	5,001	13
3-4 years	3,611	9	43	15	3,654	9
4 or more years	10,143	26	64	22	10,207	26
Total	39,433	100%	286	100%	39,719	100%

Source: Annual Survey of Nursing Homes, Bureau of Health Information, Division of Health Care Financing, Department of Health and Family Services.

Notes: Percentages may not add to 100 percent due to rounding. SNFs are skilled nursing facilities; ICFs are intermediate care facilities; IMDs are institutions for mental diseases.

- As of December 31, 1999, 35 percent of SNF and ICF residents had been in the nursing home less than one year (compared with 33 percent in 1998). Fifteen percent had been there less than 100 days, 7 percent had been there between 100 and 180 days, and 13 percent had been there 181 to 364 days.

- About one-fourth of SNF/ICF residents (26 percent) had been in the nursing home four or more years (compared with 27 percent in 1998).

STATUTE, AGENCY AND PURPOSE		SOURCE	TYPE	1999–00	2000–01
(q)	Children's trust fund grants	SEG	C	–0–	–0–
(r)	Children's trust fund: general program operations and statewide projects	SEG	A	30.000	30.000
	20.433 DEPARTMENT TOTALS				
	GENERAL PURPOSE REVENUES			–0–	–0–
	PROGRAM REVENUE			2,574.900	2,588.000
	FEDERAL			(458.500)	(458.500)
	OTHER			(1,776.400)	(1,789.500)
	SERVICE			(340.000)	(340.000)
	SEGREGATED FUNDS			30.000	30.000
	OTHER			(30.000)	(30.000)
	TOTAL–ALL SOURCES			2,604.900	2,618.000
20.434	**Adolescent pregnancy prevention and pregnancy services**				
(1)	ADOLESCENT PREGNANCY PREVENTION AND PREGNANCY SERVICES				
(a)	General program operations	GPR	A	22.400	22.400
(b)	Grants to organizations	GPR	A	87.900	87.900
(kp)	Interagency and intra–agency programs	PR–S	A	89.800	89.800
(ky)	Interagency and intra–agency aids: pregnancy prevention and services	PR–S	C	351.400	351.400
	20.434 DEPARTMENT TOTALS				
	GENERAL PURPOSE REVENUES			110.300	110.300
	PROGRAM REVENUE			441.200	441.200
	SERVICE			(441.200)	(441.200)
	TOTAL–ALL SOURCES			551.500	551.500
20.435	**Health and family services, department of**				
(1)	PUBLIC HEALTH SERVICES PLANNING, REGULATION AND DELIVERY; STATE OPERATIONS				
(a)	General program operations	GPR	A	5,341.000	5,358.000
(gm)	Licensing, review and certifying activities fees: supplies and services	PR	A	4,955.000	5,097.000
(gr)	Supplemental food program for women, infants and children administration	PR	C	–0–	–0–
(i)	Gifts and grants	PR	C	174.500	204.900
(jb)	Congenital disorders; operations	PR	A	16.200	16.200
(kx)	Interagency and intra–agency programs	PR–S	C	696.600	740.400
	Public health	PR–S	C	671.600	715.400
(m)	Federal project operations	PR–F	C	11,765.300	12,689.700
(mc)	Block grant operations	PR–F	C	6,077.100	6,079.000
(n)	Federal program operations	PR–F	C	2,962.500	2,973.200
(q)	Groundwater and air quality standards	SEG	A	331.000	331.000
	(1) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUES			5,341.000	5,358.000
	PROGRAM REVENUE			26,622.200	27,775.400
	FEDERAL			(20,804.900)	(21,741.900)
	OTHER			(5,145.700)	(5,318.100)
	SERVICE			(671.600)	(715.400)
	SEGREGATED FUNDS			331.000	331.000
	OTHER			(331.000)	(331.000)
	TOTAL–ALL SOURCES			32,294.200	33,464.400
(2)	CARE AND TREATMENT FACILITIES				
(a)	General program operations	GPR	A	39,482.600	39,743.400
(aa)	Institutional repair and maintenance	GPR	A	415.700	442.400
(b)	Wisconsin resource center	GPR	A	20,118.700	27,535.400
(bj)	Conditional and supervised release treatment and services	GPR	B	3,568.500	4,060.300
(bm)	Secure mental health units or facilities	GPR	A	8,866.600	8,141.200
(ee)	Principal repayment and interest	GPR	S	10,200.200	10,438.600
(ef)	Lease rental payments	GPR	S	–0–	–0–
(f)	Energy costs	GPR	A	2,241.900	2,283.600

BEST AVAILABLE COPY

Statute	Agency and Purpose	Source	Type	1999–00	2000–01
(gk)	Institutional operations and charges	PR	A	150,426,300	152,571,600
(gs)	Sex offender honesty testing	PR	C	–0–	–0–
(i)	Gifts and grants	PR	C	173,400	173,400
(kx)	Interagency and intra–agency programs	PR–S	C	6,788,200	6,897,300
(ky)	Interagency and intra–agency aids	PR–S	C	–0–	–0–
(kz)	Interagency and intra–agency local assistance	PR–S	C	–0–	–0–
(m)	Federal project operations	PR–F	C	–0–	–0–
	(2) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUES			84,894,200	92,644,900
	PROGRAM REVENUE			157,387,900	159,642,300
	FEDERAL			(–0–)	(–0–)
	OTHER			(150,599,700)	(152,745,000)
	SERVICE			(6,788,200)	(6,897,300)
	TOTAL–ALL SOURCES			242,282,100	252,287,200
(3)	Children and family services				
(a)	General program operations	GPR	A	3,169,100	3,501,300
(bc)	Grants for children's community programs	GPR	A	847,200	847,200
(bm)	Services for children and families	GPR	S	–0–	250,000
(c)	Statutory rape prosecution pilot program	GPR	C	183,700	–0–
(cd)	Domestic abuse grants	GPR	A	5,070,200	5,070,200
(cf)	Foster, trtmt foster & family–operated group home parent ins & liability	GPR	A	60,000	60,000
(cw)	Milwaukee child welfare services: general program operations	GPR	A	10,870,200	11,177,700
(cx)	Milwaukee child welfare services: aids	GPR	A	23,478,400	12,161,500
(dd)	State foster care and adoption services	GPR	A	19,692,600	22,922,100
(de)	Child abuse and neglect prevention grants	GPR	A	995,700	995,700
(df)	Child abuse and neglect prevention technical assistance	GPR	A	160,000	160,000
(dg)	State adoption information exchange and state adoption center	GPR	A	125,000	125,000
(dn)	Food distribution grants	GPR	A	170,000	170,000
(eg)	Adolescent services	GPR	A	115,000	592,400
(fm)	Community alcohol and other drug abuse prevention program	GPR	A	250,000	–0–
(gx)	Milwaukee child welfare services: collections	PR	C	2,992,300	2,992,300
(hh)	Domestic abuse assessment grants	PR	C	300,000	300,000
(i)	Gifts and grants	PR	C	–0–	–0–
(jb)	Fees for administrative services	PR	C	20,000	20,000
(jj)	Searches for birth parents and adoption record information: foreign adopt	PR	A	60,800	60,800
(jm)	Licensing activities	PR	A	758,000	758,300
(kc)	Interagency and intra–agency aids: kinship care and long–term kinship care	PR–S	A	22,465,400	24,521,700
(kd)	Kinship care and long–term kinship care assessments	PR–S	A	1,464,000	1,464,000
(km)	Federal block grant transfer: aids	PR–S	A	2,492,100	2,517,100
(kw)	Interagency and intra–agency aids: Milwaukee child welfare services	PR–S	C	58,893,500	58,893,500
(kx)	Interagency and intra–agency programs	PR–S	C	4,413,500	4,519,100
(ky)	Interagency and intra–agency aids	PR–S	C	815,000	815,000
(kz)	Interagency and intra–agency local assistance	PR–S	C	1,090,000	1,090,000
(m)	Federal project operations	PR–F	C	270,200	270,300
(ma)	Federal project aids	PR–F	C	1,593,300	1,468,300
(mb)	Federal project local assistance	PR–F	C	–0–	–0–
(mc)	Federal block grant operations	PR–F	C	2,313,000	2,051,200
(md)	Federal block grant aids	PR–F	C	6,314,700	5,114,700
(me)	Federal block grant local assistance	PR–F	C	250,000	–0–

Statute	Agency and Purpose	Source	Type	1999–00	2000–01
(mw)	Federal aid: Milwaukee child welfare services general program operations	PR–F	C	4,017,400	4,891,000
(mx)	Federal aid: Milwaukee child welfare services aids	PR–F	C	6,187,300	6,934,800
(n)	Federal program operations	PR–F	C	4,158,500	5,104,200
(na)	Federal program aids	PR–F	C	2,915,000	2,915,000
(nL)	Federal program local assistance	PR–F	C	4,560,600	5,889,200
(o)	Community aids; prevention activities	PR–F	C	2,710,100	2,710,100
(pd)	Federal aid: state foster care and adoption services	PR–F	C	18,314,300	21,283,100
(pm)	Federal aid: adoption incentive payments	PR–F	C	317,400	1,022,100
	(3) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUES			65,187,100	58,033,100
	PROGRAM REVENUE			150,286,400	157,605,800
	FEDERAL			(54,521,800)	(59,654,000)
	OTHER			(4,131,100)	(4,131,400)
	SERVICE			(91,633,500)	(93,820,400)
	TOTAL–ALL SOURCES			215,473,500	215,638,900
(4)	Health services planning, regulation and delivery; health care financing				
(a)	General program operations	GPR	A	7,313,200	7,378,800
(af)	HIRSP: transfer to fund for costs	GPR	A	9,900,000	11,900,000
(ah)	HIRSP: transfer to fund for premium and deductible reduction subsidy	GPR	B	780,800	780,800
(b)	Medical assistance program benefits	GPR	B	972,242,300	995,912,200
(bc)	Health care for low–income families	GPR	C	22,356,500	34,218,300
(bm)	Medical assistance administration	GPR	B	19,193,200	18,813,800
(bt)	Relief block grants to counties	GPR	A	2,000,000	2,000,000
(d)	Facility appeals mechanism	GPR	A	546,800	546,800
(e)	Disease aids	GPR	B	4,060,200	4,932,000
(g)	Family care benefit: cost sharing	PR	C	–0–	8,476,700
(gm)	Health services regulation and vital statistics	PR	A	1,610,100	1,610,700
(gp)	Health care and graduate medical education: aids	PR	C	1,550,000	1,500,000
(h)	General assistance medical program: intergovernmental transfer	PR	A	2,500,000	2,500,000
(hg)	General program operations: health care information	PR	A	2,092,000	2,437,500
(hi)	Compilations and special reports	PR	C	–0–	–0–
(i)	Gifts and grants; health care financing	PR	C	–0–	–0–
(im)	Medical assistance; recovery of correct payments	PR	C	14,502,700	14,502,700
(in)	Community options program; costs of care recovery administration	PR	A	72,500	72,600
(jz)	Badger care premiums	PR	C	1,199,300	1,660,200
(kb)	Relief block grants to tribal governing bodies	PR–S	A	800,000	800,000
(kx)	Interagency and intra–agency programs	PR–S	C	1,074,000	1,374,000
(ky)	Interagency and intra–agency aids	PR–S	C	1,008,700	1,070,000
(kz)	Interagency and intra–agency local assistance	PR–S	C	–0–	–0–
(m)	Federal project operations	PR–F	C	347,500	338,500
(ma)	Federal project aids	PR–F	C	–0–	–0–
(md)	Federal block grant aids	PR–F	C	–0–	–0–
(n)	Federal program operations	PR–F	C	22,370,400	22,506,800
(na)	Federal program aids	PR–F	C	7,088,700	7,088,700
(o)	Federal aid: medical assistance	PR–F	C	1,764,341,100	1,863,412,700
(p)	Federal aid: health care for low–income families	PR–F	C	40,033,600	61,758,100
(pa)	Federal aid: medical assistance contracts administration	PR–F	C	35,269,200	36,889,100

Statute, Agency and Purpose		Source	Type	1999–00	2000–01
(u)	HIRSP; administration	SEG	B	3,805,000	3,805,000
(v)	HIRSP; program benefits	SEG	C	46,668,500	46,668,500
	(4) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUES			1,038,393,100	1,076,482,700
	PROGRAM REVENUE			1,895,859,800	2,027,998,300
	FEDERAL			(1,869,450,500)	(1,991,993,900)
	OTHER			(23,526,600)	(32,760,400)
	SERVICE			(2,882,700)	(3,244,000)
	SEGREGATED FUNDS			50,473,500	50,473,500
	OTHER			(50,473,500)	(50,473,500)
	TOTAL–ALL SOURCES			2,984,726,400	3,154,954,500
(5)	PUBLIC HEALTH SERVICES PLANNING, REGULATION & DELIVERY; AIDS & LOCAL ASSIST				
(am)	Services, reimburse & payment related to acquired immunodeficiency syndrome	GPR	A	3,715,900	4,083,800
(cb)	Women's health services	GPR	A	1,225,000	1,027,600
(cc)	Cancer treatment, training, follow–up, control and prevention	GPR	A	1,282,800	1,282,800
(ce)	Services for homeless individuals	GPR	C	125,000	125,000
(ch)	Emergency medical services; aids	GPR	A	2,200,000	2,200,000
(cm)	Immunization	GPR	S	–0–	–0–
(de)	Dental services	GPR	A	2,860,500	2,970,500
(dg)	Tobacco prevention and education program	GPR	A	1,000,000	1,000,000
(ds)	Statewide poison control program	GPR	A	375,000	375,000
(e)	Public health dispensaries and drugs	GPR	B	391,900	391,900
(ed)	Radon aids	GPR	A	30,000	30,000
(ef)	Lead poisoning or lead exposure services	GPR	A	1,004,100	1,004,100
(eg)	Pregnancy counseling	GPR	A	275,000	275,000
(em)	Supplemental food program for women, infants and children benefits	GPR	C	167,300	167,300
(ev)	Pregnancy outreach and infant health	GPR	A	350,000	350,000
(f)	Family planning	GPR	A	1,955,200	1,955,200
(fh)	Community health services	GPR	A	3,975,000	4,175,000
(i)	Gifts and grants; aids	PR	C	–0–	–0–
(ja)	Congenital disorders; diagnosis, special dietary treatment and counseling	PR	A	1,456,400	1,456,400
(ke)	Cooperative American Indian health projects	PR–S	A	120,000	120,000
(ky)	Interagency and intra–agency aids	PR–S	C	2,517,000	2,517,000
(kz)	Interagency and intra–agency local assistance	PR–S	C	234,100	234,100
(ma)	Federal project aids	PR–F	C	3,614,100	3,614,100
(md)	Block grant aids	PR–F	C	9,174,000	9,174,000
(na)	Federal program aids	PR–F	C	56,803,000	56,803,000
	(5) PROGRAM TOTALS				
	GENERAL PURPOSE REVENUES			20,932,700	21,413,200
	PROGRAM REVENUE			73,918,600	73,918,600
	FEDERAL			(69,591,100)	(69,591,100)
	OTHER			(1,456,400)	(1,456,400)
	SERVICE			(2,871,100)	(2,871,100)
	TOTAL–ALL SOURCES			94,851,300	95,331,800
(6)	SUPPORTIVE LIVING; STATE OPERATIONS				
(a)	General program operations; projects; council on physical disabilities	GPR	A	13,420,300	13,901,200
(dm)	Nursing home monitoring and receivership supplement	GPR	S	–0–	–0–
(e)	Principal repayment and interest	GPR	S	32,400	31,300
(ee)	Admin. exp. for state suppl to federal supplemental security income program	GPR	A	859,800	859,800
(g)	Nursing facility resident protection	PR	C	150,000	150,000
(ga)	Community–based residential facility monitoring and receivership ops	PR	C	–0–	–0–

CERTIFICATE RATES

Effective: January 10, 2001 thru January 23, 2001

Regular Certificates

Minimum	Term	Dividend	APY
$500	3 months	4.75%	4.85%
$500	6 months	5.98%	6.15%
$500	9 months	5.79%	5.95%
$500	12 months	5.60%	5.75%
$500	18 months	5.70%	5.85%
$500	24 months	5.79%	5.95%
$500	30 months	5.89%	6.05%
$500	36 months	5.70%	5.85%

Dividend Paid at Maturity

Minimum	Term	Dividend	APY
$500	12 months	5.75%	5.75%

Certificate Plus *Add to at anytime!*

Additional deposits may be added during the term of the Certificate at anytime. The minimum additional deposit is $5.00. The maximum amount that can be added during the term is $10,000.

Minimum	Term	Dividend	APY
$250	6 months	5.75%	5.90%
$250	12 months	5.37%	5.50%
$250	18 months	5.46%	5.60%
$250	24 months	5.56%	5.70%

Climbing Certificate
Add to/change dividend rate!

This Certificate gives you the opportunity to change the dividend rate to the current Climbing Certificate rate once during the 2 year term. At that time you also have option of adding or subtracting up to 25% of the principal balance.

Minimum	Term	Dividend	APY
$1000	24 months	5.56%	5.70%

Home Buyers Certificate Plus

The perfect way to save for home. Make automatic deposits to this certificate and watch it grow. You can withdraw the funds without penalty for a home purchase, as long as you finance with us.

Minimum	Term	Dividend	APY
$50	24 months	5.56%	5.70%

Certificate rates are subject to change.
Dividends are paid and compounded monthly.

ALL OF THE ABOVE CERTIFICATE TYPES CAN BE ESTABLISHED FOR AN IRA DEPOSIT.

"APY" is Annual Percentage Yield

Your funds are federally insured by the NCUA

(800) 236-5560
(608) 266-3311

DIVIDEND RATES

Effective: January 1, 2001 thru January 31, 2001

Money Market Accounts

Type	Minimum	Dividend	APY
Money Market Plus	$10,000	5.75%	5.90%
	$2,500 - $9,999	2.00%	2.02%
Capitol Account	$2,500	3.45%	3.51%

Dividend Bearing Checking

NO FEES if a $250.00 minimum balance is maintained ($3.00 per month if balance falls below $250.00). Rate varies monthly. Dividends are earned on a daily basis on a balance of $25.00 or above and paid on the last day of the month.

Minimum	Dividend	APY
$25	2.00%	2.02%

Regular Savings Account

Dividends are earned on a daily basis on a balance of $25.00 or above and paid on the last day of the month.

Minimum	Dividend	APY
$25	3.20%	3.25%

Holiday Club

Same as regular savings. Add to the holiday club using payroll deduction. Your accumulated savings and dividends will be transferred to your SCCU checking or savings account the first week of November.

Minimum	Dividend	APY
$25	3.20%	3.25%

Vacation Club

Same as regular savings. If you vacation the same time every year, we can set this account up so you receive your savings plus dividend automatically in a specified month.

Minimum	Dividend	APY
$25	3.20%	3.25%

IRA Variable

Add to it any time! Rate varies monthly. Dividends are earned on a daily basis on a balance of $25.00 or above and paid on the last day of the month.

Minimum	Dividend	APY
$25	4.00%	4.07%

STATE CAPITOL CREDIT UNION

11.1.0 Availability

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and

2. The owner has a legal title to the money obtained from sale of the asset, and

3. The person owner has the legal ability to make the money available for support and maintenance.

An asset is unavailable when the owner or owner's representative documents that the asset won't be available for 30 days or more.

Example. Sylvia has life insurance which s/he can't convert to cash within 30 days. She has a letter from the insurance company stating when s/he will receive the money. It becomes available the day s/he receives the money. Schedule an eligibility review, for no later than the 60th day after the date of application.

11.1.1 Real & Personal Property

Nonexempt real and personal property is unavailable when:

1. The person who owns the property lists it for sale with a realtor. See 11.8.0 (AFDC-related nonhome property exclusions); and 11.9.0 (SSI-related nonhome property exclusions).

2. A joint owner who is outside the fiscal test group refuses to sell the property.

   When the applicant is a co-owner of the property with someone outside the fiscal group, you must determine whether s/he is a joint owner or an owner-in-common.

   Joint ownership has a right of survivorship. That is, upon the death of one joint owner, the other inherits the share of the deceased. A joint owner's share may not be sold without forcing the sale of the entire property.

   Ownership-in-common has no right of survivorship. An owner-in-common may bequeath his/her share of the property to anyone s/he chooses. S/he may also sell his/her share during his/her lifetime.

11.1.1 Real & Personal Property (cont.)

If an institutionalized person owns property that's unavailable because it's listed for sale, s/he can use some of her income to maintain the property until it is sold. Allow minimal heat and electricity costs so as to avoid physical damage to the property while it is waiting to be sold. Also allow a minimum amount of property insurance coverage. But don't allow taxes and mortgage payments; they must be paid from the proceeds of the sale.

Allow the maintenance costs for as long as the person is making a good faith effort to sell the property, but in no case for longer than 6 months.

11.2.0 Separate & Mixed Assets

When an MA group keeps an exempt asset in:

1. A separate account or an account with other exempt assets, exempt the exempt asset:

   a. Indefinitely, for example, most payments to Native Americans (15.2.1), or

   b. For as long as the exemption can be applied to the asset, for example, EITC (11.6.6), which is exempt only through the month following the month of receipt.

2. An account mixed with other assets, some of which are nonexempt, exempt the exempt asset:

   a. For 6 months from the date the exempt asset was mixed with the nonexempt assets, or

   b. If the exempt asset has been prorated as income, exempt it for the period over which it is prorated.

11.3.0 Joint Account

Account" means a deposit of funds with a financial institution (bank, savings and loan, credit union, insurance company, etc.).

Apply the following policy to savings, checking, NOW and share accounts, certificates of deposit, and similar arrangements where the holders have equal access to the funds. Assign an equal share available to each applicant/recipient who is a holder of the joint account. "Equal share" means an amount in proportion to the number of account holders. If there are 3 holders, an equal share means each gets 1/3 of the account's balance.

Don't apply the joint account policy to the following accounts.

11.3.0 Joint Accounts

1. Accounts established for business, charitable or civic purposes.

2. Trust or restricted accounts. A trust or restricted account is one in which the person named as holder of the account has no access or limited access to the funds in it.

3. Special purpose accounts. A special purpose account has at least one holder acting as the power-of-attorney, guardian, or conservator for at least one of the other holders of the account.

11.3.1 Jointly Held Real Property

Apportion an equal share of any real property or any income derived from real property to each owner. To apportion, the equity or income must be available.

11.4.0 Burial Assets

11.4.1 Plots

A burial plot is a piece of land within the confines of a cemetery authorized under Chapter 157, Wis. Stats.

Burial plots of any value may be exempt personal property. Don't exempt more plots than the number of members in the fiscal test group. The exempted plots must be for the use of the fiscal test group members.

For an SSI-related applicant/recipient, the plot must be for the use of oneself or 1 of the following:

1. Spouse.
2. Minor or adult natural, adoptive, or step child.
3. Brother or sister.
4. Natural or adoptive parent.
5. Spouse of any of the above.

11.4.2 Burial Trusts

Exempt all burial trusts made in Wisconsin that are irrevocable by Wisconsin law. If made in another state, exempt all that are irrevocable by the laws of that state. Refer any question about any state's law to your corporation counsel.

Interest and dividends are irrevocable if they accrue to irrevocable trusts and if the trust agreement specifies they are irrevocable. If the interest or dividends are irrevocable, exempt them. If not irrevocable, do not exempt them.

11.4.2.1 AFDC-Related

In family-related Medicaid, each fiscal group member may have one or more irrevocable burial trusts, the total value of which may not exceed $1,500.

11.4.2.2 SSI-Related

In SSI-related Medicaid, each fiscal group member may have one or more irrevocable burial trusts, the total value of which may not exceed $2,000.

11.4.3 Insurance

An insurance policy purchased for the insured person's funeral expense is unavailable if:

1. It includes language that says it is irrevocable.

2. It states that all of the proceeds must be used for burial expenses.

   Note: If a burial policy calls for any excess proceeds to be paid to a secondary beneficiary, it is life insurance, not burial insurance. Similarly, if a policy calls for the proceeds to be paid to a private party who is expected but not legally required to use the funds for the burial costs of the insured, the policy is life insurance.

3. The named beneficiary signs a statement that s/he understands and accepts these conditions.

The purchase of a burial insurance policy that meets the above conditions isn't a divestment because the purchaser is presumed to receive fair market value in exchange.

A life insurance policy may name a funeral director or operator of a funeral home as the beneficiary if:

1. The person who sells the policy is not an agent of the funeral director or operator of the funeral establishment, and

2. The assignment of the proceeds is contingent on the provision of funeral merchandise or funeral services as provided for in a burial agreement.

Consider as exempt an insurance policy which names a funeral director or funeral home as beneficiary .

11.4.4 Spaces

Burial space exemptions apply only to SSI-related fiscal group members. Burial space exemptions include:

1. Vaults, caskets, crypts, mausoleums, urns, or other repositories customarily used for the remains of deceased persons,

2. Necessary and reasonable improvements upon the burial space with items such as headstones, markers, plaques, and

3. Arrangements for opening and closing the gravesite.

11.4.4 Spaces (cont.)

Exempt multiple spaces of any value under the following conditions:

1. The space(s) must be owned by the SSI-related person, that person's spouse, or, when the SSI related person is a minor, by the minor's parents.

2. Both a plot and a mausoleum space can't be exempted for the same person.

3. Each person may have more than one type of space.

4. The space(s) must be for the use of the applicant/-recipient or 1 of the following:

   a. Spouse.
   b. Minor or adult natural, adoptive, or step child.
   c. Brother or sister.
   d. Natural or adoptive parent.
   e. Spouse of any of the above.

Example. Bob S., age 12, lives with his parents and is tested for SSI-related MA. His father owns 5 burial plots and spaces: #1 is for Bob, #2 and #3 are for his parents, #4 is for his older brother, who does not live at home, and #5 is for Bob's uncle. All the plots and spaces are exempt except #5.

11.4.5 Burial Funds

Burial fund exemptions apply only to SSI-related fiscal group members. Burial funds are funds that are set aside for burial expenses. SSI-related applicants, recipients, and their spouses may each have 1 burial fund.

To find the amount of a burial fund that can be exempted, add:

1. The total amount of the person's irrevocable burial trusts.

2. The face value of all of his/her life insurance policies whose cash value is exempt.

3. The face value of his/her exempt burial insurance (11.4.3).

If the total of these is $1,500 or more, don't exempt any more burial funds. If the total is less than $1,500, subtract the total from $1,500. The result of this subtraction is the amount of his/her burial fund total that can be exempted.

11.4.5 Burial Funds (cont.)

Example. Mrs. Smith, age 74, applies for MA. She has a $1,600 savings account set aside for burial, a $1,300 irrevocable burial trust, and 2 life insurance policies, each having a cash value, with face values that total $900.Add up the values of exempted assets. The irrevocable burial trust is exempt. The life insurance cash values are exempt when the total of their face values does not exceed $1500.

$1,300 irrevocable burial trust
+900 face value life insurance
$2,200

The total is more than $1,500 so no portion of the burial fund (savings account) is exempt.

Example. This time Mrs. Smith, in addition to her $1,600 burial savings account, has:

$ 300 irrevocable trust
+1,000 face value life insurance
$ 1,300

Calculate as follows:

$ 1,500 maximum burial fund exclusion
-1,300
$ 200 Mrs. Smith can exempt $200 from her burial fund (savings account). The remaining $1,400 is an available asset

Anyone claiming a burial fund must sign a statement identifying the fund's location, type, amount, and account number. The statement must specify the month and year in which s/he first intended to set the fund aside for burial. The fund can be excluded retroactively back to the 1st day of the specified month, but no earlier than November 1, 1982. It loses its exemption if it is used for anything other than the person's burial.

The fund set aside for burial must be identifiable but not necessarily segregated from other funds.

11.5.0 **Non-Burial Trusts**

A trust is any arrangement in which a person (the "grantor") transfers property to another person with the intention that that person (the "trustee") hold, manage, or administer the property for the benefit of the grantor or of someone designated by the grantor (the "beneficiary").

11.5.0 Non-Burial Trusts (cont.)

The term "trust" includes any legal instrument or device or arrangement which, even though not called a trust under state law, has the same attributes as a trust. That is, the grantor transfers property to the trustee and the grantor's intention is that the trustee hold, manage, or administer the property for the benefit of the grantor or of the beneficiary.

The grantor can be:

1. The MA applicant/recipient.
2. His/her spouse.
3. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the applicant/recipient or the applicant/recipient's spouse. This includes a power of attorney or a guardian.
4. A person, including a court or an administrative body, acting at the direction or upon the request of the applicant/recipient or the applicant/recipient's spouse. This includes relatives, friends, volunteers or authorized representatives.

11.5.1 Trust Principal

The trust principal is the amount placed in trust by the grantor plus any trust earnings paid into the trust and left to accumulate.

11.5.2 Revocable Trusts

A revocable trust is a trust which can be revoked, canceled or modified by the grantor or by a court. A trust which is called irrevocable, but which will terminate if some action is taken by the grantor, is considered a revocable trust.

The trust principal of a revocable trust is an available asset.

11.5.3 Irrevocable Trusts

An irrevocable trust is a trust that cannot, in any way, be revoked by the grantor.

The trust principal of an irrevocable trust is not an available asset.

Note: If the grantor is an institutionalized person, or someone acting on behalf of an institutionalized person, setting up an irrevocable trust may be a divestment (14.12.2)

11.5.4 Special Needs Trust

Disregard special needs trusts whose sole beneficiary is under age 65 and totally and permanently disabled (under SSI program rules) if it meets these conditions.

a. The trust must be established for the sole benefit of the disabled person by his/her parent, grandparent, legal guardian or a court **and**

b. Contain a provision that, upon the death of the beneficiary, the Wisconsin MA program will receive all amounts remaining in the trust not in excess of the total amount of MA paid on behalf of the beneficiary.

The exception continues after the person turns 65, provided s/he continues to be disabled. However, a grantor cannot add to the trust after the beneficiary turns 65. Anything added to the trust after the beneficiary turns 65 is a divestment. Money added before the beneficiary turns 65 is not a divestment.

11.5.5 Pooled Trusts

Disregard pooled trusts for disabled persons. They must meet the following conditions:

a. Established and managed by a non-profit association.

b. A separate account is maintained for each beneficiary. For purposes of investment and management, the funds from separate accounts may be pooled together.

c. The sole beneficiaries are persons determined disabled under SSI program rules.

d. Contain a provision stating that upon the death of the beneficiary the trust will use remaining funds in the account to reimburse the Wisconsin MA program.

11.6.0 Liquid Assets

11.6.1 Personal Property

Personal property in general includes money, goods, cause of action, damages for breach of contract, and evidences of debt. Value of personal property means market value. Deduct all encumbrances to arrive at a final evaluation. Count household effects, libraries, and jewels only if of unusual value.

11.6.2 Loans

If an AG member receives a loan and it's available for current living expenses, count it as an asset. Do this even if there's a repayment agreement. If it isn't available for current living expenses, disregard it.

If an AG member makes a loan (except a land contract), treat the repayments as follows:

1. Count any repayments toward the principal of the loan, whether it is a full payment, a partial payment, or an installment payment, as an asset.

2. Count any interest payment on the loan as unearned income in the month received, and as an asset in the months following the month it was received.

11.6.2.1 Reverse Mortgage

A reverse mortgage loan is a loan, or an agreement to lend, which is secured by a first mortgage on the borrower's principal residence. The terms of the loan specify regular payments to the borrower. Repayment (through sale of the residence) is required at the time all the borrowers have died, or when they have sold the residence or moved to a new one.

Treat reverse mortgage loan payments to the borrower as assets in the month received and thereafter. Do not count undisbursed funds (not yet paid to the borrower) as assets. They are considered equity in the borrower's residence.

11.6.3 HUD Payments

Disregard reimbursements resulting from federal regulatory changes in computing US Department of Housing and Urban Development (HUD) housing rent as income in the month paid and assets in the next month.

11.6.4 Annuities

An annuity is a written contract under which, in return for payment of a premium or premiums, an individual will receive a series of payments at regular intervals for a specified time period.

The annuitant is the person entitled to the payments. A purchaser can name himself/herself or another person as the annuitant. The purchaser may also name a beneficiary to receive annuity payments after the annuitant's death.

11.6.4.1 Accumulation Phase

The accumulation phase of an annuity is the period when the purchaser puts money into the annuity. During the accumulation phase, an annuity is an available asset because the annuitant can cash it in for its cash value.

Cash value (also known as surrender value) equals:

1. Total deposits made to the annuity.
   +
2. Earnings on the deposits not previously paid out.
   -
3. Withdrawals and surrender costs charged for withdrawal.

In determining the cash value, do not deduct income tax withheld or tax penalties for early withdrawal.

11.6.4.2 Pay-Out Phase

The pay-out (annuitization) phase begins at the time payments start going to the annuitant in accordance with the settlement option.

The settlement option specifies the way the funds from the annuity will be paid out. It involves choosing the amount of each payment, how often payments will be made, and the length of time over which the payments will be made.

An annuity becomes an unavailable asset on the date the settlement option is made final. This means even if the payment starts months later, it is unavailable on the date the settlement option is made final.

11.6.5 Life Insurance

Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions.

Cash value means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it.

Count the cash value of all life insurance policies. For persons age 65 or over, blind or disabled, count it only when the total face value of all policies owned by each person exceeds $1,500. Do this calculation for each SSI related person. In determining the face value don't include any life insurance which has no cash value.

Life insurance policies always have a face value, but don't always have a cash value. Term life insurance is limited to a defined time period as stated in the policy and doesn't usually have cash value. Group life insurance is usually term insurance and usually has no cash value. An endowment insurance plan generally has cash value.

11.6.6 Endowment to CCRC

Frequently, in order to enter a continuing care retirement community (CCRC), a person must pay a large, one-time entrance fee as an endowment. In exchange for this and, sometimes, an additional monthly payment, the person is promised care for the rest of his/her life, unless s/he chooses to move.

Endowments such as this are unavailable assets.

11.6.7 Income Tax Refunds

Federal and state income tax refunds are available assets.

11.6.8 EITC

Disregard all Earned Income Tax Credit (EITC) payments in the month received and in the month after receipt.

After the "month received' and the "month after receipt" have passed, count the EITC payment as an available asset.

11.6.9 Vehicles

A vehicle is any:

1. Passenger car or other motor vehicle
2. Used to transport persons or goods, and
3. Owned by someone in the fiscal test group.

In an AFDC-related case, don't test any tractor, truck, or other farm vehicle used directly in producing farm income.

In all cases, log skidders (used to move logs out of the woods to market) are exempt vehicles.

11.6.9.1 Determining Equity Value

Equity value is:

1. The vehicle's wholesale value as given in a standard guide on motor vehicle values (blue book), or the value as estimated by a sales representative at a local dealership;
2. Minus any encumbrances (loans or mortgages) that are recorded on the vehicle's title as liens.

Don't increase a vehicle's value by adding the value of low mileage or other factors, such as optional equipment or apparatus for the handicapped.

Occasionally , a vehicle has more than 1 owner. Some of the owners may be in the fiscal test group, others not. To find what the fiscal test group's equity value in the vehicle is, do the following:

1. Find the vehicle's wholesale value.
2. Subtract the encumbrances (loans or mortgages) that are recorded as liens on the vehicle's title. The result is the equity value.
3. Divide the equity value by the total number of owners.
4. Add up the prorated equity values of the owners who are in the fiscal test group. The result is the fiscal test group's equity value in the vehicle.

11.6.9.2 When to Count, When to Exempt

Count vehicle values as follows:

1. AFDC-MA (MA R, MA U) and AFDC-Related cat needy MA (MAOU and MAOR), when the fiscal group owns:

   a. One vehicle, exempt up to $1,500 of its equity value. Count the equity value above $1,500.

   b. Two or more vehicles, exempt up to $1,500 of the equity value of the vehicle with the highest equity value. Count the equity value above $1,500 of the vehicle with the highest equity value, and count the full equity value of all other vehicles.

2. AFDC-related, medically needy MA (NAOR), when the fiscal group owns:

   a. One vehicle, exempt it.

   b. Two or more vehicles, exempt 1 (as in a. above) and exempt a 2nd vehicle if it is necessary for employment or to obtain medical care.

   Count the full equity value of all vehicles not exempted in a. or b. above.

3. SSI-related categorically and medically needy MA, when the fiscal group owns:

   a. 1 vehicle, exempt it if it meets 1 of the following conditions:

      Necessary for employment, or

      Necessary for medical treatment of a specific or regular medical problem, or

      Modified for operation by or transportation of a handicapped person, or

      Necessary because of climate, terrain, distance or similar factors to provide transportation to perform essential daily activities.

11.6.9.2 When to Count, When to Exempt (cont.)

   b. 1 vehicle and it does not meet any of the above conditions, exempt it if its fair market value does not exceed $4,500. Fair market value in excess of $4,500 counts toward the asset limit.

   c. 2 or more vehicles, count the full equity value of all vehicles except for the 1 vehicle that meets the conditions of either a. or b. above.

11.6.10 Property Settlement

Money received as a property settlement is always an asset regardless of whether it's paid in one payment or in installments. It's never income.

11.6.11 Lump Sums

Lump sum payments (rather than recurring payments) from such sources as insurance policies, sale of property, Railroad Retirement, Unemployment Compensation benefits, and retroactive corrective financial aid payments are counted as an asset when received.

11.6.11.1 Retroactive SS Payments

Do not count a retroactive social security or SSI payment as an asset for 6 months, beginning with the month the payment is received. A retroactive payment means it is paid later than the month in which it is due. After 6 months, treat any remaining available portion as an asset.

During the 6 months in which it is not counted, the unspent portion of the payment can be mingled with other funds, provided it can be distinctly and separately identified.

11.6.12 Land Contract

When a land contract is executed, the purchaser builds equity in the property through the payments s/he makes. The seller keeps legal title to the property until it is paid for. The seller's interest in the land contract is personal property, not real property.

The seller's legal title to the property can be sold and converted to cash for support and maintenance. To determine the value of the seller's legal interest in the land contract:

1. Find the original sale price or the fair market value (as determined by a qualified real estate appraiser). Of these 2 amounts choose the one which more accurately reflects the contract's true value on the date it was originated:

11.6.12 Land Contract (cont.)

2. From this amount subtract:

   a. Payments which the purchaser has already made on the principal.

   Example. The fair market value of the land contract is $50,000. The purchaser has already paid $10,000 on the principal.

   $ 50,000 Fair Market Value)
   -10,000 Already Paid
   $ 40,000 Outstanding Balance

   b. Encumbrances on the contract, for example, a personal loan.

   c. The amount lost to a discount.

   Example. Milton Rokeach wants to buy up Mr. Graham's land contract. He asks for a 10% discount.

   $40,000 Outstanding Balance
   - 4,000 10% Discount Given by Mr. Graham to Milton Rokeach
   $36,000 Value of Mr. Graham's Interest in the Land Contract.

3. The remainder, after subtracting a., b., and c. from the original sale price, is the value of the seller's interest in the land contract. Count this as an available asset.

If the land contract isn't an available asset, the person must document its unavailability by showing that either: (1) the terms of the land contract prohibit its sale, or (2) no one is willing to purchase it from him/her.

When the claim is that no one will purchase the land contract, it must be offered for sale to at least one individual or organization active in the land contract purchasing market. A written statement from the individual or organization that they won't buy it is sufficient to establish the land contract as an unavailable asset.

Notice that if it has been offered only to an individual or organization that never purchases land contracts, it remains an available asset.

11.6.13 Mortgage

Treat any mortgages held by and owed to an applicant or recipient the same as a land contract.

11.6.14 Wisconsin Higher Education Bonds

The State of Wisconsin sells Wisconsin Higher Education Bonds to the public as a way to save for higher education. To determine their net value, subtract broker's fees from market value.

The bonds may be sold back to the State, under certain time restraints:

1. Before the maturity date, a portion of their value is withheld. The amount withheld equals the school's tuition and fees. Any excess goes to the person.

2. On or after the maturity date, the value is the total amount received.

The bonds may be sold on the "secondary" bond market at any time. Since they can be disposed of on the market with no time limit they are an available asset. To determine their net value, subtract broker's fees from market value. (Verify the amounts through a broker.)

11.6.15 Wartime Relocation of Citizens

Disregard restitution paid under PL 100-383 to Japanese-Americans and Aleuts or their survivors who were interned or relocated during WW II.

11.6.16 Agent Orange Settlement Fund

Disregard payment received from the Agent Orange Settlement Fund or any other fund established in settling "In Re Agent Orange product liability Settlement Fund litigation, M.D.L. No. 381 (E.D.N.Y.)". Disregard as income in the month received and as an asset forever after.

11.6.17 Radiation Exposure Compensation Act

Disregard payments from any program under the Radiation Exposure Act (PL 101-426) paid to persons to compensate injury or death resulting from exposure to radiation from nuclear testing ($50,000) and uranium mining ($100,000).

When the affected person is dead, payment is made to his/her surviving spouse, children, parents, or grandparents. The federal Department of Justice reviews the claims and makes the payments.

Apply this disregard retroactively to 10-15-90 and continue to disregard the payment for as long as it is identified separately.

11.6.18 Institutionalized Person's Assets

An institutionalized person's personal allowance may accumulate to where s/he may lose eligibility due to excess assets. To prevent this, s/he can spend money on personal needs or make a refund to the agency. If s/he chooses to refund the agency, calculate what a year's accumulation will be and work out a payment schedule. When the payments equal MA benefits received, have the person stop the payments until s/he receives more benefits.

If the person refuses to refund, discontinue eligibility when the asset limit is exceeded. S/he remains ineligible until the assets are again at or below the limit. At that point s/he may reapply.

These instructions apply to all institutionalized MA recipients, whether certified by your agency or by the Social Security Administration.

11.6.19 Blind/Disabled Set-Aside

Disregard the following for a blind or disabled person:

1. Assets essential to the continuing operation of her/his trade or business.
2. Other income-producing property.
3. Assets set aside to carry out an approved self-support plan. The set-aside must be segregated from other funds. Disregard interest that accumulates, provided the set-aside does not exceed the provisions of the plan.

11.6.20 Replacing and Repairing Exempt Assets

Vehicles and homes are examples of exempt assets. If an exempt asset is lost, stolen, or damaged, disregard any cash (and interest earned) or in-kind replacement received from any source to repair or replace it.

The cash or in-kind payment must be used within 9 months of the date it is received. After the end of the 9th month, count as an asset leftover cash not used for the repairs or replacement.

Extend the 9 month period for up to another 9 months if the person has good cause for not repairing or replacing the thing. Good cause means: circumstances beyond the person's control prevent repair or replacement. This includes not being able to contract it out. When there is good cause, count as an asset any amount not used for repairs or replacement. Begin with the month after the end of the extension.

11.6.20 Replacing and Repairing Exempt Assets (cont.)

If, during a good cause extension, the person no longer intends to replace or repair the exempt asset, count the amount for replacement or repair as an asset. Begin with the month the person reports his/her change of intent.

11.6.21 Retirement Benefits

Treat as an asset all retirement funds that are available for withdrawal by a fiscal group member unless s/he:

- is an ineligible spouse in an SSI-related case or
- has to quit a job to get the retirement funds.

Disregard any retirement funds or IRA's of an ineligible spouse in an SSI related case. Retirement funds for this purpose are funds held in individual retirement accounts (IRA's), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans). This includes the community spouse in spousal impoverishment cases.

11.6.22 Gifts

A gift is something a person receives which is not repayment for goods or services the person provided and is not given because of a legal obligation on the giver's part. To be a gift, something must be given irrevocably (that is, the donor relinquishes all control).

A gift is unearned income. Accept an individual's signed estimate of the value of the gift (or actual value, if cash) unless you have reason to doubt the estimate. If you doubt the estimate, determine the item's current market value with an independent source.

A cash gift is <u>income</u> in the month of receipt. It is an <u>asset</u> in the months after the month of receipt. Disregard cash gifts (such as for birthdays, graduation, and Christmas) that total $30 or less, for each assistance group member, for each calendar quarter.

11.6.23 US Savings Bonds

Count the cash value of a US Savings Bond unless it is unavailable. A bond is unavailable only if the MA group proves it tried to cash the bond and was refused.

11.6.24 Zebley Payments

Disregard all SSI payments received by anyone as a result of the Zebley <u>v</u>. Sullivan decision. Do not count it as income or a lump sum in the month received. Do not count it as an asset even if the family keeps the money and does not spend it.

11.6.25 Indian Judgment Fund Purchases	Disregard assets purchased with Indian judgment funds (15.2.1, #10). But don't disregard: 1. Proceeds from the sale of these initial purchases. 2. Subsequent purchases made with the proceeds from the sale of these initial purchases
11.6.26 Payments to Nazi Victims	Disregard payments made under PL 103-286 to victims of Nazi persecution.
11.6.27 Spina Bifida Child	Disregard payments made under PL 104-204 to any child of a Vietnam veteran for any disability resulting from the child's spina bifida.
11.6.28 Uniform Gifts to Minors Act	Count funds held in an account for the benefit of a minor that are the result of transfers under the Uniform Gifts to Minors Act. This act is also called the Uniform Transfers to Minors Act. The funds are available when determining eligibility for the minor unless a court determines otherwise.
11.6.29 IDA Programs	IDA stands for Individual Development Accounts. These are restricted accounts owned by low-income people and the IDA program provides matching funds for buying a home, starting a business, or post-secondary education. Client savings and interest are a countable asset if the IDA were established using the Assets for Independence Act or Refugee Assistance Act funds. However, if W-2 or Community Reinvestment funds support the IDA program, the assets are exempt.
11.7.0 <u>Home Property</u>	A home is a place of abode and lands used or operated in connection with it. In urban situations the home usually consists of a house and lot. A home can consist of a house and more than one lot. As long as the lots adjoin one another, they are considered part of the home. In farm situations the home consists of the house and buildings together with the total acreage property upon which they are located and which is considered a part of the farm. There will be farms where the land is on both sides of a road and considered a part of the home.

11.7.1 Multiunit Dwelling	When an MA fiscal group member lives in 1 unit of a multi-unit dwelling and owns all of the units, exempt all of the units and the property they are on. Consider the whole multiunit dwelling as the group member's home.
11.7.2 Trailer Homes	A trailer home that isn't used as a home is: 1. Nonhome property if it's on nonhomestead land owned by the trailer owner, or 2. Personal property if it's on land not owned by the trailer owner, or 3. Exempt if it's on homestead property.
11.7.3 Exempt Home Property	Although home property is an exempt asset under the conditions described in this subsection, there are limits on divesting home property. See 14.2.3.1. <u>Non-Institutionalized Person</u>. For a person who is not residing in an institution, the home is exempt as long as the person resides in it, or intends to return to it. There is no time limit for an intended return. The home remains exempt even if the person rents out part of it while s/he continues to reside there. <u>Institutionalized Person</u>. When a person resides in an institution, the home is exempt if one of the following conditions is met: 1. His/her spouse or dependent relative resides in the home. The dependency of the relative may be of any kind, such as financial or medical. The relative may be father, mother, daughter, son, grandson, granddaughter, in-laws, stepmother, stepfather, stepson, stepdaughter, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, stepsister, halfsister, halfbrother, niece, nephew, or cousin. 2. The institutionalized person expresses his/her intent to return to the home. If s/he is able to form an intent but unable to express it, determine his/her intent through other available evidence. Other evidence includes: a. His/her written statements.

11.7.3 Exempt Home Property (cont.)

b. His/her oral statements made before incapacitation. Accept reports of these statements made by family members.

c. Accept reports of his/her intent made by an authorized representative (IMM I-A). If there is no evidence s/he disagrees with the statement, accept the authorized representative's statement.

If s/he appears unable to form an intent but has not been judged incompetent by a court, accept a family member's statement as evidence of his/her intent.

If s/he has been judged incompetent, accept the intent statement of his/her guardian. Use the guardian's intent statement even if it differs from the applicant/recipient's.

If neither condition #1 nor #2 is met, the property is no longer the principal residence and becomes nonhome property.

11.7.4 Sale of Home Property

Money from the sale of real property is an asset. When the property that is sold is a homestead:

1. AFDC-related MA counts the proceeds as available at once unless they are immediately absorbed in the purchase of another home.

2. SSI-related MA allows the proceeds to be disregarded if they are placed in an escrow account and used to purchase another home within 3 months.

11.7.5 Life Estate

A life estate gives a person certain property rights for his/her lifetime. S/he has the right to possess and use it, and to make money from it. S/he also has the right to sell his/her interest in it.

The person doesn't have title to or the right to sell the property. S/he usually may not pass it on to his/her heirs as an inheritance. S/he is liable for all costs of the property such as taxes and repairs, unless s/he moves off the property or the will (or deed) states otherwise.

When property is conveyed to one person for life (life estate holder) and to another person (the remainder man), both a life estate interest and a remainder interest are created. When the life estate holder dies, the remainder man holds full and unconditional title to the property and can dispose of it as s/he wishes (fee simple).

11.7.5 Life Estate (cont.)

A life estate or remainder interest in homestead or non-homestead property is an unavailable asset. To determine the value of a life estate or remainder interest:

1. In the Life Estate and Remainder Interest Table (30.2.0) find the line for the person's age as of the transaction date.
2. Multiply the figure on that line in the Life Estate or Remainder column times the fair market value to determine the value of the life estate or remainder interest.

When a life estate holder moves off the property and the property is rented, follow the instructions in 15.5.3 for counting the rental income.

11.8.0 AFDC-Related Non-home Property Exclusions

Non-home property is any asset other than a homestead. If the value of the non-home property doesn't exceed the categorically needy asset limit, an otherwise eligible person may be eligible for Medicaid and keep the property.

If it exceeds the categorically needy asset limit but the non-home property isn't available (11.1.0), exclude the property's value from the asset total.

If it's available, the owner must agree in writing to sell the property within 9 months. Use the Real Property Agreement (35.11.8.1).

In the effort to sell the property, the owner must list it with a realtor at a fair market value. During the 9 months, don't count the property in the asset total. If it isn't disposed of in 9 months, reevaluate it's fair market value and include it in the asset total.

The 9 month period runs consecutively unless there is at least one complete month break in eligibility. The first agreement signed will be anticipated to cover 9 months. Each time there is a break in eligibility have another agreement signed if the full 9 month period was not allowed.

Example: Applicant signs a 9 month agreement. MA is discontinued after 5 months. If client reapplies at a later date and still owns the excess property, have him/her sign another agreement which allows a 4 month disposal period.

An AFDC-related group is allowed a total of 9 months for each separate parcel of excess real property. The 9-month limit applies even when an AFDC-related group becomes ineligible sometime during the original agreement period. If the group reapplies, and the property has not been disposed of within 9 months of the original agreement, the group is ineligible.

11.9.0 SSI-Related Nonhome Property Exclusions

Nonhome property is any countable asset other than a homestead. See 14.4.0 for divestment. Exclusions of nonhome property in SSI-related cases include:

1. Real Property that is listed for sale with a realtor at a price consistent with it's fair market value.

2. Property excluded regardless of value or rate of return. Property used in a trade or business is in this category. See Appendix 22.3.1.2.

3. Property excluded up to $6,000, regardless of rate of return. This category includes nonbusiness property used to produce goods or services essential to self-support. Any portion of the property's equity value in excess of $6,000 is not excluded.

   Nonbusiness property essential to self-support can be real or personal property. It produces goods or services essential to self-support when it is used, for example, to grow produce or livestock solely for personal consumption, or to perform activities essential to the production of food solely for home consumption.

4. Property excluded up to $6,000 if it is nonbusiness property that produces a net annual income (either cash or in-kind income) of at least 6 percent.

If the excluded portion produces less than a 6% return due to circumstances beyond the person's control (e.g., crop failure, illness), and there is reasonable expectation that it will again produce at least a 6% return, continue to consider the first $6000 in equity as excluded.

11.10.0 Indian Lands

Exclude a Native American's interest in or possession of land which is held by an individual Native American or tribe, and which can only be disposed of with the approval of other individuals, the tribe, or the Federal government.